In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1286

VINCENT ANTHONY CIRAOLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI FOR THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that a juror fell asleep during his trial and that his conviction therefore should be reversed.

After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on two counts of possessing and concealing counterfeit currency in violation of 18 U.S.C. 472, of exchanging and transferring counterfeit currency in violation of 18 U.S.C. 473, and of conspiracy to commit both of these offenses in violation of 18 U.S.C. 371. He was sentenced to a term of imprisonment for sixteen years. The court of appeals affirmed (Pet. App. A-1).

Petitioner's contention that he was denied due process and his constitutional right to a jury trial by the inattentiveness of one juror was raised below and properly rejected by the court of appeals (Pet. App. A-5--A-6) on

the ground that "Counsel may not permit juror misconduct or inattentiveness to go unnoticed, thereby sewing a defect into the trial, and later claim its benefit."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.